

148.855 Evaluation standards -- Tourism attraction project applications -- Consulting services -- Cabinet recommendations.

- (1) The secretary of the Commerce Cabinet shall establish standards for the making of applications for inducements and the recommendation to the authority of eligible companies and their tourism attraction projects by the promulgation of administrative regulations in accordance with KRS Chapter 13A.
- (2) The secretary of the Commerce Cabinet shall consult with the authority when establishing standards to ensure that standards established pursuant to subsection (1) of this section and KRS 148.857(1) do not conflict.
- (3) With respect to each eligible company making an application to the secretary of the Commerce Cabinet for inducements, and with respect to the tourism attraction project described in the application, the secretary of the Commerce Cabinet shall make inquiries and request materials of the applicant that shall include, but not be limited to, marketing plans for the project that target individuals who are not residents of the Commonwealth; a description and location of the project; capital and other anticipated expenditures for the project that indicate that the total cost of the project shall exceed one million dollars (\$1,000,000), except for a theme restaurant destination attraction's project cost, which shall exceed five million dollars (\$5,000,000), and the anticipated sources of funding therefor; the anticipated employment and wages to be paid at the project; business plans which indicate the average number of days in a year in which the project will be in operation and open to the public; and the anticipated revenues and expenses generated by the project. If the tourism attraction project is an entertainment destination center, the sales tax refund shall be dedicated to a public infrastructure purpose that shall relate to the tourism attraction project and shall be approved by the secretary of the Commerce Cabinet. The applicant shall submit the public infrastructure purpose with its application. Based upon a review of these materials, if the secretary of the Commerce Cabinet determines that the eligible company and the tourism attraction project may reasonably satisfy the criteria for final approval in subsection (4) of this section, then the secretary of the Commerce Cabinet may submit a written request to the authority requesting that the authority consider a preliminary approval of the eligible company and the tourism attraction project.
- (4) After receiving a preliminary approval by the authority, the secretary of the Commerce Cabinet shall engage the services of a competent consulting firm to analyze the data made available by the eligible company and to collect and analyze additional information necessary to determine that, in the independent judgment of the consultant, the tourism attraction project:
 - (a) Shall attract at least twenty-five percent (25%) of its visitors from among persons who are not residents of the Commonwealth, except for a theme restaurant destination attraction, which shall attract a minimum of fifty percent (50%) of its visitors from among persons who are not residents of the Commonwealth;

- (b) Shall have costs in excess of one million dollars (\$1,000,000), except for a theme restaurant destination attraction, which shall have costs in excess of five million dollars (\$5,000,000);
 - (c) Shall have a significant and positive economic impact on the Commonwealth considering, among other factors, the extent to which the tourism attraction project will compete directly with existing tourism attractions in the Commonwealth and the amount by which increased tax revenues from the tourism attraction project will exceed the credit given to the approved company;
 - (d) Shall produce sufficient revenues and public demand to be operating and open to the public for a minimum of one hundred (100) days per year, except for a theme restaurant destination attraction, which shall be operating and open to the public for a minimum of three hundred (300) days per year; and
 - (e) Shall not adversely affect existing employment in the Commonwealth.
- (5) The independent consulting firm shall consult with the authority, the Office of the State Budget Director and the Finance and Administration Cabinet in the development of a report on the proposed tourism attraction project. The Office of the State Budget Director and the Finance and Administration Cabinet shall agree as to the methodology to be used and assumptions to be made by the independent consultant in preparing its report. On the basis of the independent consultant's report and prior to any approval of a project by the authority, the Office of the State Budget Director and the Finance and Administration Cabinet shall certify to the authority whether there is a projected net positive economic impact to the Commonwealth and the expected amount of incremental state revenues from the project. Approval shall not be granted if it is determined that there is no projected net positive economic impact to the Commonwealth.
- (6) The eligible company shall pay for the cost of the consultant's report and shall cooperate with the consultant and provide all of the data that the consultant deems necessary to make its determination under subsection (4) of this section.
- (7) After a review of relevant materials, the consultant's report, and completion of other inquiries, the secretary of the Commerce Cabinet shall, by written notification to the authority, provide a recommendation to the authority regarding final approval of the tourism attraction project.

Effective: June 20, 2005

History: Amended 2005 Ky. Acts ch. 85, sec. 564, effective June 20, 2005; and ch. 95, sec. 25, effective June 20, 2005. -- Amended 2003 Ky. Acts ch. 73, sec. 4, effective March 18, 2003. -- Repealed, reenacted, and amended 2001 Ky. Acts ch. 1, sec. 4, effective June 21, 2001. -- Amended 1998 Ky. Acts ch. 48, sec. 12, effective July 15, 1998; and ch. 238, sec. 2, effective April 1, 1998. -- Created 1996 Ky. Acts ch. 335, sec. 3, effective July 15, 1996.

Legislative Research Commission Note (6/20/2005). This section was amended by 2005 Ky. Acts chs. 85 and 95, which do not appear to be in conflict and have been codified together.

Formerly codified as KRS 154.29-030.